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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 MARKETING SOLUTIONS
10 INTERNATIONAL,

11 Plaintiff,

12 v.

13 FIVE STAR RESORTS TRAVEL LLC,
14

15 Defendant.

Case No. C17-435RSM

ORDER TO SERVE DEFENDANT

16 This matter comes before the Court *sua sponte*. According to the Complaint in this
17 case, On June 7, 2017, the Court Ordered Plaintiff Marketing Solutions International to inform
18 the Court if Marketing Solutions International is a sole proprietorship, explain why Plaintiff's
19 method of service by mail was proper, and to provide the current status of Plaintiff's
20 prosecution of this case. On June 17, 2017, Plaintiff responded by stating that it is a sole
21 proprietorship under the control of Mark William Daigle, who is filing on its behalf. Dkt. #7.
22 Plaintiff stated that service by mail was its "only recourse" as it had paid a company to serve
23 "but they could not reach James Kelch... through personal service... [and] there were no
24 persons manning building [sic] where the principal office of the respondent is located." *Id.*
25 Plaintiff informs the Court that "[t]he status of the Plaintiff's case is in first stage of filing the
26 case to the court." *Id.*
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1 The Court will accept Plaintiff's assertion that it is a sole proprietorship and allow Mr.
2 Daigle to file on behalf of his business. However, the Court does not accept Plaintiff's position
3 that it has properly served Defendant in this case.

4 To determine whether service of process is proper, courts look to the requirements of
5 Federal Rule of Civil Procedure 4. Rule 4(h) provides two methods for proper service on a
6 business defendant. First, a plaintiff may serve a business pursuant to state law in the state
7 where the district court is located. Fed. R. Civ. P. 4(h)(1)(A). To properly serve a corporate
8 defendant under Washington law, a plaintiff must deliver a copy of the summons "to the
9 president or other head of the company or corporation, the registered agent, secretary, cashier
10 or managing agent thereof or to the secretary, stenographer or office assistant of the president
11 or other head of the company or corporation, registered agent, secretary, cashier or managing
12 agent." RCW 4.28.080(9). Second, Rule 4(h) allows a plaintiff to serve a corporation "by
13 delivering a copy of the summons and complaint to an officer, a managing or general agent, or
14 any other agent authorized by appointment or by law to receive service of process and — if the
15 agent is one authorized by statute and the statute so requires — by also mailing a copy of each
16 to the defendant." Fed. R. Civ. P. 4(h)(1)(B). In any event, service by mail may not be
17 accomplished unless Plaintiff moves the Court for alternative service and sets forth an
18 appropriate basis for that request. Pursuant to Rule 4(m), service must occur within 90 days
19 after the filing of the complaint. Unless the plaintiff can show good cause for his failure to
20 serve, the court can dismiss the action without prejudice or extend the time for service. Fed. R.
21 Civ. P. 4(m).

22 The Court concludes that Plaintiff has not properly served Defendant Five Star Resorts
23 Travel, LLC. Plaintiff may not simply mail a copy of the Summons and Complaint to
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1 Defendant's address without seeking the Court's permission. Because 90 days have passed
2 since Plaintiff filed the Complaint, the Court could dismiss this case without prejudice, but will
3 instead extend the time for service by 30 days. *See* Rule 4(m). The Court is not convinced by
4 the limited information before it that service by mail is warranted in this case and encourages
5 Plaintiff to renew its effort to serve Defendant as required under Rule 4(h)(1).
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7 Accordingly, the Court hereby finds and ORDERS that Plaintiff must properly serve
8 Defendant **within thirty (30) days of the date of this Order**. Failure to properly serve
9 Defendant will result in dismissal of this case without prejudice.
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11 DATED this 19 day of June, 2017.
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15 RICARDO S. MARTINEZ
16 CHIEF UNITED STATES DISTRICT JUDGE
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